



7100 Northland Circle, Suite 212
Brooklyn Park, MN 55428
(763) 547-7000

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: Docket #R-1210; Regulation E – Electronic Funds Transfer

Dear Ms. Johnson,

UMACHA appreciates the opportunity to comment on the proposed Official Staff Commentary to Regulation E. UMACHA represents over 830 financial institutions within the 9th Federal Reserve District on electronic payments issues and opportunities.

Generally speaking, the proposed changes will help clear up a number of issues that have been problematic for those parties that originate and receive electronic check transactions. At the same time there are a few proposals that either need further clarification or may cause confusion for those involved with electronic transactions. Each of these will be discussed below.

Electronic Check Conversion:

There are five different issues addressed in this section. They are: (1) notices provided to consumers concerning electronic check transactions, (2) the tying of merchants and other services providers to the requirements of Regulation E for the purposes of obtaining the consumers authorization, (3) the notice requirements before each ARC entry is generated, (4) new notice requirements for persons initiating electronic check transactions, and finally (5) written authorization becoming a requirement when a consumer completes a sale at a cash register (POP).

UMACHA is confused as to why Regulation E is restating a requirement already written into the 2001 Commentary. In 2001 UMACHA talked to Board Staff and a number of attorneys about the requirement to inform consumers, through a disclosure (most often done via the initial disclosure) that in some cases when a check is presented it may be made into an electronic entry and the financial institution in question would be accepting and posting those entries to the consumers account. Board staff made it clear that this was a requirement so UMACHA informed its members that they needed to update their initial disclosures and distribute them to their consumer customers. By restating this

Reg. E Comment Letter
Nov. 19, 2004

requirement some financial institutions will undoubtedly be confused and redistribute these disclosures, thereby spending money they don't need to.

The second issue deals with having the Regulation apply to merchants and other service providers for the limited purpose of the authorization requirement. The ACH already holds the merchant responsible for posting a notice for two of the three electronic check applications. Therefore we don't foresee this as a big issue for merchants or other providers.

The third issue deals with the notice requirements for ARC and would allow a biller or service provider to notify a consumer that their check might be processed as a check or as an EFT. UMACHA supports this approach, however we would like to suggest that a single notice giving the option noted above would be less confusing to consumers than having three possible notices as suggested.

The fourth issue deals with new requirements for persons initiating electronic check transactions. Those requirements include informing a consumer that their funds may be debited from their account quickly and if they get their checks back they will not get the check back on an ECK item. In both of these cases it seems unnecessary and a burden to the originator of the transaction. In many cases check transactions clear as fast, if not faster, than an electronic one. And most consumers don't get their checks back today so why confuse them with language suggesting that others may be.

This final issue is a very difficult one. We recognize that having Regulation E in sync with the ACH Rules brings some benefits. At the same time this would not be necessary if the Commentary would include language that noted that the ACH Rules and the Regulation are NOT the same and that as long as the Rules are more restrictive than the Regulation the Rules would apply. By changing the Commentary to mirror the Rules we may restrict new product development rather than see any improvement in the payment system therefore UMACHA does not support this change.

Error Resolution:

We found this section very confusing. Assuming the Board intends to alter this portion of the Regulation the Commentary needs to be much clearer as to its intent. Does the Board expect RDFI's (in the ACH world) to check within their four walls and with any service provider they work directly with, or are they expected to take their investigation all the way to the originating financial institution and ultimately to the originating company? We would hope that it would be the former as this would be consistent with the spirit of the Regulation today.

Payroll Cards:

UMACHA concurs that payroll cards should be covered by the regulation. The only issue we see is that of the definition of "account". In many cases there is no real account

Reg. E Comment Letter
Nov. 19, 2004

for the consumer, only a number to store the information in so the dollars can be distributed. This may be a legal issue if this is ever challenged.

Preauthorized Transfers:

There are three issues within this section UMACHA would like to comment on. The first is the proposed change to the telephone authorized transaction. A tape recorded conversation, without some sort of authentication (be it a PIN or other code) should not be considered an electronically signed authorization and therefore UMACHA feels the language should not be changed at this time.

The second issue surrounds stop payments. We agree that a financial institution should take a stop payment from a consumer and use whatever means it can to block or stop that transaction. At the same time the Board should review HOW the Regulation views stop payments. In the check world a stop payment only stops one transaction but that is not the implication within Regulation E; and it should be. We suggest the Board staff review the process in the Regulation surrounding stop payments and bring that language into line with industry practices; i.e. separating stop payments from transactions where the authorization has been revoked.

The final issue deals with a proposed change to the 10-day Rule. In today's world of phishing, spoofing, and identity theft it seems the wrong time to suggest that a company would not need to send a notice to a consumer if a dollar amount for a debit is about to change. The ACH Rules already allow for ranges and few companies take advantage of that opportunity. We suggest that the Board not make this change.

Again, UMACHA appreciates the opportunity to submit this comment. If there is any further information we can share with Board staff we would be more than happy to do so.

Sincerely,

Fred Laing, II
President

Cc: UMACHA Board of Directors